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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Raymond W. Blodgett JR.

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INSKEEP INTELLECTUAL PROPERTY GROUP, INC
2281 W. 190TH STREET
SUITE 200
TORRANCE, CA 90504

EXAMINER

KRUER, STEFAN

ART UNIT

PAPER NUMBER

3654

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.		Applicant(s)	
	10/726,352		BLODGETT ET AL.	
	Examiner		Art Unit	
	Stefan Krueer		3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 45 is/are pending in the application.
- 4a) Of the above claim(s) 2 - 4, 6, 12 - 13, 15 - 19, 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 7 - 11, 14 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 22 - 45 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Election/Restrictions***

Newly submitted **Claims 22 - 45** are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the lifting device identified as **Group I**, and hereby being a subcombination, of the Requirement for Restriction mailed 4 April 2006 is not structurally connected or critical to the utility of the invention identified as a recreational vehicle, hereby identified as **Group II** and being a combination.

Group I, Claims 1 - 14, 20-21 drawn to a lifting device, classified in Class 254, Subclass 424.

Group II, Claims 22 - 45, drawn to features of a recreational vehicle, classified in Class 280, Subclass 288.4.

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the subcombination is limited to the unique features of a lifting device *only*, whereas the combination claims features of a recreational vehicle and is silent regarding an acme screw and bracket. The subcombination has separate utility such as can be of a lift for storage containers of service vehicles.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, **Claims 22 - 45** are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 5 and 10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Re: Claims 1 and 5, a second storage position was neither described in the specification nor depicted in the drawings. Furthermore, neither a position in relation to a ceiling nor a ceiling or that what can be construed as such was described or depicted. For purpose of prosecution, a second storage position will be interpreted as "... a raised, stowed position...." as reviewed in Paragraph 0005.

Re: Claim 10, a payload comprising a mattress was neither described in the specification nor depicted in the drawings. For purpose of prosecution, a payload comprising a mattress will be interpreted as being a payload capable of supporting a mattress whereby said payload is a bed (flat frame structure) in accordance with the specification.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the second storage position, a ceiling of a vehicle, wherein said second storage position is adjacent said ceiling and a payload comprising a mattress must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 7 – 11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rice et al (4,353,436) in view of Anderson et al (2,187,90).

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Re: Claims 1 and 5, Rice et al disclose:

- a frame (including 36, 38, 50, 52, 28 and 30, Fig. 1),
- an acme screw (68, Fig. 3) secured to said frame,
- a bracket assemblage (70, Fig. 4) slidably disposed on said frame, said bracket sized and shaped so as to support and constrain rotation of his retention members (74), thereby requiring said bracket assemblage to slide when said acme screw is rotated,
- said assemblage having a payload flange (46) for supporting a bed (40);
- said bracket assemblage movable between a first user-accessible position and a second storage position, wherein the first user-accessible position is proximal to a floor (24) of said vehicle and said second storage position of a raised, stowed position (Col. 2, Lines 40 – 45) as well as prior art in which the second storage position involves the raising to an elevated position adjacent a ceiling of a vehicle (Col. 2, line 3 – 7).

however, Rice et al do not disclose a primary acme nut.

Attention is directed to Anderson et al (2,187,90) who teach their primary acme nut (22) for co-axial movement along their acme screw (12).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify the invention of Rice et al with the teaching of Anderson et al to incorporate a primary acme nut in lieu of the retention members, for the advantage of durability.

Re: Claims 7 and 14, Rice et al is silent regarding indicia of failure.

Anderson et al disclose their indicia of failure (34, Fig. 2) of their primary nut whereby their motor circuit is broken "...before the wear on the threads 27 becomes dangerous..." whereby visual alerting means in lieu an automatic shut-off to alert the user are offered as well (Col. 2, Line 43).

It would have been obvious to one of ordinary skill in the art to modify the invention of Rice et al with the teaching of Anderson et al to afford the user either or both an automatic or visual means to warn of potential catastrophic failure.

Re: Claim 8, Rice et al disclose their hand crank (110, Fig. 1).

Re: Claim 9, Rice et al disclose their electric motor (56, Fig. 1).

Re: Claim 10, Rice et al disclose their linear actuator system (Fig. 3) comprising:

- at least one acme screw (68) rotatably fixed to a framework (including 38, 50, 52, 28 and 30, Fig. 1) in a vehicle (26),
- a support system (including 36, 46, 70, Fig. 4) mounted on said frame work and slidable along said at least one acme screw,
- a payload (40, Fig. 3) coupled to said support system, said payload
- and said at least one acme screw rotatably confined and supported on said support system (Fig.'s 3 and 4);
- wherein said support system moves said payload between a first height accessible to a user and a second height inaccessible to a user.

however, Rice et al disclose their retention members (74) engaged with the threads of their at least one acme screw, in lieu of an acme nut.

Attention is directed to Anderson et al (2,187,90) who teach their primary acme nut (22) for co-axial movement along their acme screw (12).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify the invention of Rice et al with the teaching of Anderson et al to incorporate a primary acme nut in lieu of the retention members for durability.

In reference to the claim language referring to for use in a recreational vehicle, intended use and other types of functional language must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. In re Casey, 152 USPQ 235 (CCPA 1967); In re Otto, 136 USPQ 458, 459 (CCPA 1963).

Re: Claim 11, Rice et al disclose two acme screws (Fig. 1).

Re: Claim 20, Rice et al disclose their elongated flexible support (42, Fig. 3).

Response to Arguments

Applicant's arguments with respect to **Claims 1 and 10** have been considered but are not persuasive.

With respect to applicant's arguments that a lack of motivation is disclosed in either of the cited references for supporting their combination, the prior art of reference comprise a manual wheel chairlift for a vehicle, wherein the wheelchair lift encompasses the majority of the elements of those as claimed by the instant invention and wherein said lift is directly related to both the art of classification and application of the instant invention. Furthermore, the prior art of reference that teaches a primary nut for movement along an acme screw is that of elevators, in particular of a *Safety and Indicating Mechanism for Elevators*, well within the ordinary skill of the art at the time of the instant invention was made, and directly analogous to the acme screw of said wheelchair lift, whereby the former reference teaches matters of safety and durability as directed to the acme screw that are certainly applicable to a contemporary environment.

With respect to the nature of a payload, the prior art of reference comprising a wheel chair lift incorporates elements that anticipate the instant invention as claimed as well as the function of the claimed apparatus. The payload of said reference being a bed or similar device or structure is well within the disclosure of said reference.

As a final comment regarding the applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Neither the original claim language nor the amended claim language overcame the rejections based on the prior art of record of the previous office action.

Conclusion

This application contains **Claims 22 - 50** drawn to an invention nonelected without traverse in Paper filed 4 May 2006. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Simonelli et al (3,651,965) and Hock (4,252,491) are cited for references of lifting devices having a payload comprising a bed, each of said devices having a first user-accessible position proximal a floor of a vehicle and a second storage position adjacent a ceiling of said vehicles as well as a first height accessible to a user and a second height inaccessible to a user.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefan Kruer whose telephone number is 571.272.5913. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on 571.272.6911. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866.217.9197 (toll-free).

SHK
28 February 2007


GENE O. CRAWFORD
SUPERVISORY PATENT EXAMINER